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SCHWEGMAN, LUNDBERG, WOESSNER & KLUTH, P.A. P.O. BOX 2938 MINNEAPOLIS, MN 55402			PIERCE, JEREMY R	
			ART UNIT	PAPER NUMBER
			1771	

DATE MAILED: 03/15/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No. 09/754,026	Applicant(s) BAER ET AL.	
	Examiner Jeremy R. Pierce	Art Unit 1771	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 22 December 2003.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 31-57 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 31-57 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>12/22/03</u> . | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on December 22, 2003 has been entered.

### ***Response to Amendment***

2. Applicant's amendment adds claim 57. Claims 31-57 are now currently pending. Applicant's arguments are sufficient to withdraw the 35 USC 103 rejection set forth in section 4 of the last Office Action.

### ***Claim Rejections - 35 USC § 112***

3. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

4. Claims 31-57 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to

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which it pertains, or with which it is most nearly connected, to make and/or use the invention.

Claims 31 and 36 recite a third mode where the wet-wipe has a second thickness that is increased from the third thickness. However, the specification does not enable one skilled in the art how to make the wet-wipe have increased thickness after stretching. The specification does disclose that upon stretching and recovery of the wet-wipe, the thickness of the gatherable layer is increased (page 46, lines 16-19). However, Applicant does not state how such a composite wet-wipe having an elastic layer and a gatherable layer is made so that it has this feature. Why does this wet-wipe have an increased thickness after stretching and recovery, whereas other wipes having a gatherable layer and an elastic layer do not? The specification does not provide the feature that creates this limitation.

Claim 47 recites "during stretching, the natural fibers of the at least one gatherable layer break free from adjacent material to an increased thickness." However, this is not enabled by the specification. Why does an increased thickness result?

Claim 57 recites "means for increasing the thickness of the wet-wipe from a first, storage mode to a second, use mode." However, the specification only enables that stretching and recovery cause an increased thickness in the wet-wipe. But this does not distinguish the invention from anything in the prior art because wipes made with an elastic layer and gatherable layer were made with the purpose of stretching and

recovering. Applicant does not enable a person skilled in the art how the stretching and recovery provide an increased thickness.

5. Claims 47-51 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

Claim 47 recites "during stretching, the natural fibers of the at least one gatherable layer break free from adjacent material to an increased thickness." There is no support in the specification for this limitation.

6. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

7. Claims 31-35 and 47-51 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

With regard to claims 31-35, claims merely setting forth physical characteristics desired in an article, and not setting forth specific compositions which would such characteristics, are invalid as vague, indefinite, and functional since they cover any conceivable combination of ingredients either presently existing or which might be discovered in the future and which would impart the desired characteristics. *Ex parte Slob*, 157 USPQ 172 (BdPatApp&Int 1968). Claim 31 describes a wet-wipe that has

various properties, but provides no composition as to what the wet-wipe is made of.

What is the material of claims 31-35? What constitutes the wet-wipe?

With regard to claims 47-51, claim 47 recites “during stretching, the natural fibers of the at least one gatherable layer break free from adjacent material to an increased thickness.” What is the adjacent material that the natural fibers break free from? Is it other fibers within the gatherable layer? Is it the elastic layer?

***Claim Rejections - 35 USC § 102/103***

8. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

10. Claims 31-41, 43, 44, 52, 54, and 57 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Jackson et al. (U.S. Patent No. 4,741,944).

Jackson et al. disclose a wet-wipe that includes an elastic nonwoven web joined to a gathered non-elastic web of spunbonded fibers (column 4, lines 51-64). Jackson et al. disclose the wet-wipe is stretched in the direction of the elasticity upon removal of

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the wipe from the container (column 6, lines 6-24). Although Jackson et al. do not explicitly teach the limitations that the thickness after stretching would be greater than the thickness before stretching, it is reasonable to presume that said limitations are inherent to the invention. Support for said presumption is found in the use of similar materials (i.e. an elastic nonwoven web and a gathered non-elastic nonwoven web) and in the similar production steps (i.e. bonding the non-elastic web to the elastic web so that it is gathered when the composite is relaxed) used to produce the wet-wipe. The burden is upon the Applicant to prove otherwise. *In re Fitzgerald*, 205 USPQ 594. In the alternative, the dispensing arrangement process disclosed by Jackson et al. would obviously have provided the claimed thickness change. Note *In re Best*, 195 USPQ 433, footnote 4 (CCPA 1977) as to the providing of this rejection under 35 USC 103 in addition to the rejection made above under 35 USC 102. With regard to claims 32 and 34, the wet-wipe disclosed by Jackson et al. is capable of stretching between 5 and 30% its original length. With regard to claims 33, 35, and 54, the amount of thickness gain and density loss would be inherent or obviously provided for the same reasons set forth above, i.e. using similar materials in a similar process. If not inherent, the claimed change in thickness would be obvious to provide as a matter of adjusting a result effective variable. The change in thickness would affect the resulting loft, and thus softness of the wet-wipe. It would have been obvious to a person having ordinary skill in the art at the time of the invention to have the change in thickness be about 18% in order to provide the desired amount of softness to the wet-wipe, since it has been held that discovering an optimum value of a result effective variable involves only routine skill

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in the art. *In re Boesch*, 617 F.2d 272, 205 USPQ 215 (CCPA 1980). With regard to claims 37, 40, 41, and 43, Jackson et al. do not provide density, cup crush, or tensile strength values of the web. As stated before, since Jackson et al. disclose similar materials made with a similar process to make a similar product, the claimed properties would likely be inherent in the composite of Jackson et al. If not inherent, density, cup crush, and tensile strength are all properties that are known to be adjustable in the art of making nonwoven fabrics. Adjusting the result effective variables of density, cup crush, and tensile strength would alter the wet-wipe's loft, flexibility, strength, and durability in use. It would have been obvious to one having ordinary skill in the art at the time of the invention to adjust the density, cup crush, and tensile strength of the wipe of Jackson et al. in order to obtain the desired loft, flexibility, strength, and durability in the wet-wipe, since it has been held that discovering an optimum value of a result effective variable involves only routine skill in the art. With regard to claims 38 and 39, Jackson et al. disclose using preservatives, fragrances, emollients, humectants, detergents, and soaps (column 4, lines 59-60). With regard to claim 52, Jackson et al. disclose the liquid to comprise up to about 160 percent by weight (column 14, line 36). With regard to claim 57, Applicant discloses in the specification that the increase in thickness is obtained from the stretching and recovery of the composite (page 10, lines 5-6). Jackson et al. disclose the wipe is stretched upon removal from the dispenser (column 6, lines 3-26).

***Claim Rejections - 35 USC § 103***



11. Claims 55 and 56 are rejected under 35 U.S.C. 103(a) as being unpatentable over Jackson et al. in view of Lang et al. (U.S. Patent No. 6,429,261).

Jackson et al. do not disclose a thickness of the wet-wipe. Lang et al. teach that wet wipes typically have a thickness between 0.2 and 1 mm (column 41, lines 1-2). It would have been obvious to one having ordinary skill in the art at the time of the invention to make the wet-wipe with a thickness of 0.9 mm or 1.0 mm, in order to create a composite material with a thickness suitable for use as a wet-wipe, as taught by Lang et al.

12. Claims 31-37, 40, 41, 43-47, and 54-57 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wideman (U.S. Patent No. 4,606,964) in view of Jackson et al.

Wideman disclose a web of elastic material bonded to at least one gatherable web. Wideman discloses the composite may be used as a baby wipe (column 8, lines 13-14), but do not disclose the wipe to have different modes or to be contained in any manner. Jackson et al. disclose a wet-wipe container where the wet-wipes are stretched in the direction of the elasticity upon removal of the wipe from the container (column 6, lines 6-24). It would have been obvious to one having ordinary skill in the art at the time of the invention to contain the wet-wipes disclosed by Wideman in the manner disclosed by Jackson et al. in order to give the user a positive indication of removal, as taught by Jackson et al. Although Wideman does not explicitly teach the limitations that the thickness after stretching would be greater than the thickness before stretching, it is reasonable to presume that said limitations are inherent to the invention. Support for said presumption is found in the use of similar materials (i.e. an elastic

nonwoven web and a gathered non-elastic nonwoven web) and in the similar production steps (i.e. bonding the non-elastic web to the elastic web so that it is gathered when the composite is relaxed) used to produce the wet-wipe. The burden is upon the Applicant to prove otherwise. In the alternative, the dispensing arrangement process disclosed by Jackson et al. would obviously have provided the claimed thickness change. With regard to claims 32 and 34, the wet-wipe disclosed by Wideman is capable of stretching between 5 and 30% its original length. With regard to claims 33, 35, and 54, the amount of thickness gain and density loss would be inherent or obviously provided for the same reasons set forth above, i.e. using similar materials in a similar process. If not inherent, the claimed change in thickness would be obvious to provide as a matter of adjusting a result effective variable. The change in thickness would affect the resulting loft, and thus softness of the wet-wipe. It would have been obvious to a person having ordinary skill in the art at the time of the invention to have the change in thickness be about 18% in order to provide the desired amount of softness to the wet-wipe, since it has been held that discovering an optimum value of a result effective variable involves only routine skill in the art. With regard to claims 37, 40, 41, and 43, Wideman does not provide density, cup crush, or tensile strength values of the web. As stated before, since Wideman discloses similar materials made with a similar process to make a similar product, the claimed properties would likely be inherent in the composite of Wideman. If not inherent, density, cup crush, and tensile strength are all properties that are known to be adjustable in the art of making nonwoven fabrics. Adjusting the result effective variables of density, cup crush, and tensile strength would alter the wet-wipe's

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loft, flexibility, strength, and durability in use. It would have been obvious to one having ordinary skill in the art at the time of the invention to adjust the density, cup crush, and tensile strength of the wipe of Wideman in order to obtain the desired loft, flexibility, strength, and durability in the wet-wipe, since it has been held that discovering an optimum value of a result effective variable involves only routine skill in the art. With regard to claims 45-47, Wideman discloses the gatherable web may be made from combinations of natural and synthetic fibers (column 6, lines 14-34). With regard to claim 55, Wideman does not disclose a thickness of the composite after it is removed from the container. It would have been obvious to one having ordinary skill in the art at the time of the invention to make the wet-wipe within the range of 1.0 mm to 1.7 mm, since such a modification would have involved a mere change in the size of a component. With regard to claim 56, Wideman does not disclose a thickness of the composite while it is still in the container. It would have been obvious to one having ordinary skill in the art at the time of the invention to make the wet-wipe with a thickness of less than 0.9 mm, since such a modification would have involved a mere change in the size of a component. With regard to claim 57, Applicant discloses in the specification that the increase in thickness is obtained from the stretching and recovery of the composite (page 10, lines 5-6). The wipe of Wideman would be stretched upon removal from the dispenser, as taught by Jackson et al. (column 6, lines 3-26).

13. Claims 38, 39, and 48-53 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wideman in view of Jackson et al. and further in view of Buczwinski et al. (U.S. Patent No. 5,785,179).

With regard to claims 38, 39, 48, 49, 52, and 53, Wideman does not disclose the necessary information to impregnate the baby wipe with cleaning solution. Buczwinski et al. disclose baby wipes are impregnated with water, emollient, surfactant, and preservative in an amount of between 150 and 600 percent by weight of the wipe (column 5, lines 28-45). It would have been obvious to one having ordinary skill in the art at the time of the invention to impregnate the wipe of Wideman with between 150 and 600 percent by weight of cleaning solution in order to use the composite as a baby wipe, as taught by Buczwinski et al. With regard to claims 50 and 51, Wideman does not disclose an appropriate ratio of natural to synthetic fibers. Buczwinski et al. disclose that coform webs used as baby wipes typically comprise between 30 and 40 percent by weight of synthetic fibers (column 5, lines 23-27). It would have been obvious to one having ordinary skill in the art at the time of the invention to use between 60 and 70 percent by weight natural fibers in the non-elastic layer of Wideman in order to better use the composite as a baby wipe, as taught by Buczwinski et al.

14. Claim 42 is rejected under 35 U.S.C. 103(a) as being unpatentable over Jackson et al. in view of Wright (U.S. Patent No. 5,385,775).

Jackson et al. do not disclose the elastic layer to have its fibers arranged in a substantially parallel configuration. Wright teaches that using parallel elastic fibers in a composite gatherable web offers improved tenacity in one direction (Abstract). It would have been obvious to one having ordinary skill in the art at the time of the invention to use substantially parallel fibers in the elastic layer of Jackson et al. in order to provide

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improved tenacity in the stretching direction with the gathers being aligned in a parallel fashion (column 6, line 4).

15. Claim 42 is rejected under 35 U.S.C. 103(a) as being unpatentable over Wideman in view of Jackson et al. and further in view of Wright.

Wideman does not disclose the elastic layer to have its fibers arranged in a substantially parallel configuration. Wright teaches that using parallel elastic fibers in a composite gatherable web offers improved tenacity in one direction (Abstract). It would have been obvious to one having ordinary skill in the art at the time of the invention to use substantially parallel fibers in the elastic layer of Wideman in order to provide improved tenacity in the stretching direction with the gathers being aligned in a parallel fashion (column 6, line 4).

### ***Double Patenting***

16. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

17. Claims 31-57 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 2-31 and 33-36 of copending Application No. 09/751,329. Although the conflicting claims are not identical, they are not patentably distinct from each other because both sets of claims relate to a non-woven elastic layer bonded to a non-woven gatherable layer at at least two points.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

### ***Response to Arguments***

18. Applicant's arguments filed December 22, 2003 have been fully considered but they are not persuasive.

19. Applicant argues that the thickness change features recited in claims 31 and 36 are not necessarily inherent in Jackson. However, a prior art reference does not need to specifically describe all the potential properties that a material might have. The Examiner asserts that since the reference meets all the structural limitations of the claim (an elastic web material bonded to a non-elastic web material), and the reference teaches the same process for making the material (gathering the non-elastic web between bond points to the elastic web), and the reference is within the same art (wet-wipes) as the claims, that the properties exhibited by the structure would be inherent. The technical reasons for establishing inherency are the fact that similar materials are

used in similar production steps to create a similar product. The burden is now on Applicant to prove that the material of Jackson cannot meet the claimed properties.

20. Applicant argues that Jackson teaches away from the present invention because Jackson teaches that the gathers of adjacent interleaved wipes are in general facing parallel alignment to each other so that the gathers of the leading wipe are adapted to temporarily engage the gathers of an immediately following wipe upon removal of the leading wipe. However, engaging the gathers would result in an increase in the compression on the gathered layer. Upon removal from the dispenser, the gathers would disengage, and the compressing force would be lifted, which would allow the thickness to increase.

21. Applicant argues that no document applied against the claims suggests the unexpected benefit of increasing the thickness of the wet-wipe before use. However, Applicant is not claiming any method of increasing thickness of a wet-wipe. The resulting increased in thickness in the wipe's "third mode" would be a property characteristic of the materials. Applicant has not set forth any distinguishing structural limitations in the claims from the prior art. Since the prior art meets the structural limitations of the claim, the Examiner must assume that the resulting properties are inherent, for the reasons set forth above in the rejection. The burden is on Applicant to prove otherwise.

22. Applicant argues that Jackson does not teach using a natural fiber, so there is at least one embodiment not of the same materials and thus not made using the same production steps. However, Applicant has not established that the property of increased

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thickness occurs because of the presence of natural fibers. Additionally, the Jackson reference was not used in rejecting claims where natural fibers were claimed limitations.

23. Applicant submits that reliance on *In re Fitzgerald* is misplaced because the limitations in claims 31, 36, and 47 are structural features. The claimed feature of increased thickness after stretching the wet-wipe is not taught by the references. However, the references disclose similar materials formed by similar processes as taught by the Applicant, as set forth above in the rejection. The Examiner does not have access the wet-wipe materials of the prior art references to see if the feature of increased thickness after stretching is present in those references. The Examiner uses *Fitzgerald* because it teaches that once it is shown that similar processes in the art form similar materials, the Examiner may presume that resulting limitations are inherent unless proven otherwise. Even if Applicant classifies the claimed feature of increased thickness after stretching as "structural," it does not change the fact that such a structural limitation is a resulting property of the actual material.

24. Applicant argues that *In re Spormann* is appropriate because the prior art document makes no mention of the process. However, the Jackson reference teaches bonding an elastic nonwoven layer to gatherable nonwoven layer, which is the same process described by Applicant.

25. Applicant argues claims 32 and 24 are allowable because Jackson does not teach stretching between 5 and 30% of the wipe's original length. However, the claims are product claims. These limitations are process of using limitations, and do not further



limit the product claims. The manner in which a wipe is used has no patentable weight on a product claim.

26. Applicant argues that the rejection to claims 33, 35, and 54 lacks specificity needed to appeal any further rejection. However, since the material product of Jackson appears to be the same as Applicant's, the Examiner must assume the resulting property is inherent, as the Examiner does not have the capacity to measure the resulting thickness of the wet-wipe of Jackson after it is stretched. Even if not inherent, adjusting the thickness change would be a matter of adjusting a result effective variable, as set forth above in the rejection.

27. Applicant argues that the features in claims 37, 40, 41, and 43 are not merely optimum values, as these features must also allow the thickness of the wet-wipe to be increased from the first mode to the second mode. However, Applicant does not establish what values are necessary to allow for the thickness of the wet-wipe to increase or how these values relate to the property of the wet-wipe increasing in thickness. Additionally, Applicant has not proven that these properties would not be inherent to the prior art.

28. Applicant argues that Jackson does not teach a liquid in an amount of 150% to 600% of a dry weight of the composite elastic material. However, Jackson et al. disclose the liquid to comprise up to about 160 percent by weight (column 14, line 36).

29. Applicant asserts that Wideman does not teach features of the thickness after stretching being greater than the thickness before stretching. As set forth above in the

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rejection, the Examiner asserts that such a feature would be inherent since similar materials are used.

30. Applicant asserts that there is no expectation of success to modify Wideman in view of Jackson. However, the Examiner has provided the motivation of giving the user a positive indication of removal for combining Wideman and Jackson.

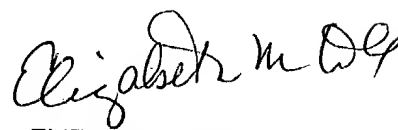
### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jeremy R. Pierce whose telephone number is (571) 272-1479. The examiner can normally be reached on Monday-Thursday 7-4:30 and alternate Fridays 7-4.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel Morris can be reached on (571) 272-1478. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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ELIZABETH M. COLE  
PRIMARY EXAMINER